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IN THE
COURT OF APPEALS OF INDIANA

JOHN PROSSER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0802-CR-186
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jose Salinas, Judge
Cause No. 49G14-0710-FD-210270

August 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant John Prosser appeals the sentence imposed by the trial court after he pleaded guilty to Possession of Cocaine,[1] a class D felony, and Operating a Vehicle While Intoxicated,[2] a class A misdemeanor, arguing that the sentence is inappropriate in light of the nature of the offenses and his character. Finding no error, we affirm.

FACTS

On October 3, 2007, Prosser was driving his vehicle while intoxicated. He operated the vehicle at a speed higher than the posted speed limit, nearly collided with a nearby police officer who was driving a motorcycle, and struck a barrier on the right-hand side of the road. Additionally, Prosser had cocaine in his possession while he was driving. On October 4, 2007, the State charged Prosser with class D felony possession of cocaine and class A misdemeanor operating a vehicle while intoxicated.

On January 31, 2008, Prosser pleaded guilty as charged pursuant to a plea agreement. Prosser agreed to serve between one and three years on the possession of cocaine conviction and between 180 days and one year on the operating while intoxicated conviction, with the length of sentences and portion of any suspended sentences left to the trial court's discretion. At the January 31, 2008, sentencing hearing, the trial court found Prosser's acceptance of responsibility, health conditions, and guilty plea to be mitigating circumstances, and it found his criminal history and the nature of the offenses

[1] Ind. Code § 35-48-4-6.

[2] Ind. Code § 9-30-5-2.

to be aggravating factors. The trial court also noted that home detention was unlikely to be successful because Prosser had recently disabled his monitoring device while on home detention. Finding that the aggravators outweighed the mitigators, the trial court imposed a three-year sentence for the possession of cocaine conviction, with one year suspended, and a one-year sentence for the operating while intoxicated conviction, with three hundred and twenty-five days suspended, to be served concurrently, for an aggregate executed sentence of two years. Prosser now appeals.

DISCUSSION AND DECISION

Prosser's sole argument on appeal is that the sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As for the nature of Prosser's offenses, he operated a vehicle while intoxicated, speeding, nearly colliding with a nearby police officer on a motorcycle, and eventually striking a barrier on the right-hand side of the road. He possessed cocaine at the time he was driving. Prosser's behavior evinces a marked disregard for the safety of the public—and, significantly, a police officer—and we do not find that the nature of his offenses aids his inappropriateness argument.

As for Prosser's character, we turn first to his criminal history, which consists of convictions for possession of marijuana, operating a vehicle while intoxicated, operating

a vehicle while intoxicated causing death, and class A misdemeanor battery. While awaiting trial for the present offenses, Prosser was placed on home detention, and on November 24, 2007, Prosser disabled the secured continuous remote alcohol monitoring device. Marion County Community Corrections ordered Prosser to appear on November 28 or 29, but Prosser did not appear, and eventually the trial court issued a warrant for his arrest.

Prosser directs our attention to a number of health conditions he deals with on a daily basis. Although we have no reason to doubt the existence of these ailments, we note that he will receive healthcare services through the Department of Correction. Prosser has not demonstrated that his health conditions render the sentence imposed by the trial court inappropriate.

He also emphasizes the fact that he pleaded guilty and received little in return for the guilty plea. As noted above, however, the trial court indicated that it considered his guilty plea to be a mitigator and explicitly noted the fact that Prosser agreed to a plea agreement providing for a minimum executed sentence of one year. Tr. p. 15. On appeal, Prosser is essentially arguing that the trial court should have afforded greater mitigating weight to his guilty plea. We no longer evaluate the way in which the trial court weighs aggravators and mitigators, however, Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), and do not find that Prosser's guilty plea renders the sentence inappropriate.

Prosser's criminal history and very recent act of disabling the monitoring device while on home detention reveal that he has scant respect for his fellow citizens and the

rule of law. In the past, the judicial system has treated him with leniency by suspending part or all of his sentences, but he has not taken these opportunities to better himself or seek the help that he needs. Under these circumstances, we cannot conclude that the sentence imposed by the trial court is inappropriate in light of the nature of the offenses and Prosser's character.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.